

# The Davis-Bacon Act: Suspension

Updated February 8, 2006

Congressional Research Service

<https://crsreports.congress.gov>

RL33100

## Summary

The Davis-Bacon Act is one of several statutes that deals with federal government procurement. (See also the Walsh-Healey Act of 1936 and the McNamara-O'Hara Service Contract Act of 1965.) Enacted in 1931, Davis-Bacon requires, *inter alia*, that *not less than* the locally prevailing wage be paid to workers engaged in federal contract construction. The act does not deal directly with non-federal construction. In addition to the act *per se*, the prevailing wage principle has been incorporated within a series of federal program statutes through the years. And, many states have enacted "little Davis-Bacon" acts of their own.

The act of 1931, as amended, provides that the President "may suspend the provisions of this subchapter during a national emergency." With slight variation, that provision has been a part of the statute since it was enacted.

The act has been suspended explicitly on four separate occasions: (a) In 1934, President Franklin Roosevelt suspended the act in what appears to have been for administrative convenience associated with New Deal legislation. It was restored to full strength in less than 30 days with few people, seemingly, aware of the suspension. (b) In 1971, President Richard Nixon suspended the act as part of a campaign intended to quell inflationary pressures that affected the construction industry. In just over four weeks, the act was reinstated, the President moving on to different approaches to the problem. (c) In 1992, in the wake of Hurricanes Andrew and Iniki, President George H. W. Bush suspended the act in order to render reconstruction and clean-up in Florida and the Gulf Coast and in Hawaii more efficient. The impact of the suspension is unclear for the act was suspended on October 14, 1992, just days prior to the 1992 election. President William Clinton restored the act on March 6, 1993. And, (d) on September 8, 2005, President George W. Bush suspended the act in order to render more efficient reconstruction and clean-up of Florida and the Gulf Coast in the wake of Hurricane Katrina. The act was reinstated on November 8, 2005.

In the suspensions of 1934 and 1971, the suspension applied to the entire country—possibly with the understanding that it would be restored once the immediate *emergency* was over. In 1992 and in 2005, only portions of the country were involved. In 1992, it remains unclear how long the suspension might have lasted—if George H. W. Bush had been re-elected. Similarly, the suspension under George W. Bush was intended to be open-ended—i.e., "until otherwise provided." But in fact, it lasted for about two months. The suspensions are also separated by the definition of "national emergency" used to invoke them: administrative convenience in 1934, inflationary pressures in the construction industry in 1971, and issues associated with hurricane damages in 1992 and in 2005.

This report reviews the several cases during which the Davis-Bacon Act was suspended and will likely be updated as developments make necessary.

## Contents

The Davis-Bacon Act .....	1
Davis-Bacon Suspended.....	3
Franklin D. Roosevelt .....	3
Richard M. Nixon.....	4
Setting the Stage .....	4
Davis-Bacon Suspended .....	4
The Davis-Bacon Act Reinstated .....	6
Some Implications of the Nixon Suspension .....	9
George H. W. Bush.....	10
The President Acts on Davis-Bacon .....	10
Suspension of Davis-Bacon Draws Fire, Praise.....	11
President Clinton and Restoration of Davis-Bacon .....	12
Suspension Under George W. Bush.....	13
Reaction from President Bush.....	13
Reaction to the Promulgation.....	14
Legislation Introduced .....	15
Davis-Bacon Reinstated .....	15

## Contacts

Author Information.....	16
-------------------------	----

The Davis-Bacon Act (1931, as amended) provides for payment of at least the locally prevailing minimum wage on federal contract construction. It also provides that the President “may suspend” the act during a period of a national emergency.

The act has been suspended explicitly on four separate occasions: (a) in 1934, by President Franklin Roosevelt, apparently for administrative reasons; (b) in 1971, by President Richard Nixon, as a means of coping with inflationary pressures; (c) in 1992, by President George H. W. Bush, in the wake of Hurricanes Iniki in Hawaii and Andrew in Florida; and (d) in 2005, by President George W. Bush, in the wake of Hurricane Katrina with respect to Florida and the Gulf Coast. In the first three cases, the suspensions were brief. In the case of 2005, the suspension lasted for two months prior to reinstatement. This report reviews the several instances in which the Davis-Bacon Act was suspended and, in some measure, discusses their implications.<sup>1</sup>

## The Davis-Bacon Act

The Davis-Bacon Act of 1931, as amended, requires, *inter alia*, that construction contracts entered into by the federal government specify minimum wages to be paid to the various classes of laborers employed under those contracts.<sup>2</sup> *Minimum wages* are defined as those determined by the Secretary of Labor (a) to be prevailing (b) in the locality of the project (c) for similar crafts and skills (d) on comparable construction work. The concept of wage was expanded in 1964 to include a fringe benefit component. The act has a coverage threshold of \$2,000 and above.

In addition to direct federal construction contracts, the Davis-Bacon prevailing wage “principle” has been written into a series of federal program statutes. The act is supplemented by the 1934 Copeland “anti-kickback” Act (which requires weekly reporting of wages actually paid and an affirmation from employers that any deductions from wages due to employees have been proper), and by federal overtime pay and health and safety standards statutes. Further, some states have enacted “little Davis-Bacon” Acts within their respective jurisdictions.

The issues surrounding the act have changed little through the years. Does the act protect workers, help stabilize the construction industry, and serve the federal contracting community? Or is it anti-competitive, preventing flexible workforce utilization? Has it been administered effectively, and if not, can it be administered in an equitable fashion? Is there sufficient objective information concerning the act to allow for fair assessment of the statute and its impact?

The Davis-Bacon Act is a *federal statute*. It does not have any *direct impact* upon non-federal construction or wage rates. In so far as it ensures that persons employed on federal contract work receive not less than the prevailing wage, the act could have a ripple effect upon non-federal construction and/or other work.<sup>3</sup>

Is the Davis-Bacon wage a union wage? And, does the act mandate that union wages be paid on federal contract construction projects? It may be a union wage—where the union rate is determined to be *the locally prevailing wage*. But it need not be the union rate. It depends upon the rate that the Department of Labor (DOL) finds to be prevailing in an area. If the union rate prevails, then the union rate becomes the Davis-Bacon wage. If another rate (a non-union wage)

---

<sup>1</sup> For a legal analysis, see CRS Report RL33276, *Prevailing Wage Requirements and the Emergency Suspension of the Davis-Bacon Act*, by John R. Luckey and Jon O. Shimabukuro.

<sup>2</sup> See 40 U.S.C. 276a-276a-7. The statute has now been re-codified at 40 U.S.C. 3141-3148.

<sup>3</sup> Alongside the Davis-Bacon Act are two other statutes governing labor standards on federal contracts: the Walsh-Healey Act (1936), 41 U.S.C. 35-45, dealing with goods made under contract for the federal government; and the McNamara-O’Hara Act (1965), 41 U.S.C. 351-358—otherwise known as the “service contract act”—which deals with contracts for services entered into by the federal government.

prevails, then that rate becomes the Davis-Bacon rate. A great deal depends upon the processes and procedures of the Department of Labor which administers the act.

Does the Davis-Bacon Act inflate the cost of federal contracts? Theoretically, it should not. The Department of Labor reviews the conditions under which public (federal) construction occurs, determines the “locally” prevailing wage, and then applies that wage to federal projects. But the Davis-Bacon rate need not be the actual rate paid, since the market may require a higher rate in order to recruit employees. Thus, the Davis-Bacon wage *may be a floor* and not necessarily the wage paid.

What is meant by *locality*? Traditionally, the department observes the wage rates paid on several classes of construction (i.e., residential, public buildings, highways, and heavy construction) for each jurisdiction (normally a county unit) across the United States. It is usually upon that unit that *locality* is based.

Perhaps the most frequently asked question concerning the Davis-Bacon Act is the following: How much money could we save (the taxpayer and the government contractor) if the Davis-Bacon Act were repealed or modified to narrow its scope? Many have claimed to have an answer, but there is little empirical evidence available. The short answer would seem to be that no one really knows. Does the Davis-Bacon Act, in fact, save money for the federal construction consumer? It may—but that question is similarly open.

After nearly three-quarters of a century, why is the literature on Davis-Bacon of such dubious value? First, given the number of projects covered by the act (and their diversity), it is nearly impossible for an independent scholar to review the act’s administration and to assess its impact. Second, there is the availability of basic documentation. How much information has actually been preserved? Third, assuming that the data are available, securing such documentation (and access to administrative personnel) may be problematic.

If one assumes that documentation exists, that the analyst is granted access to it, that all of the parties are cooperative, and that the means, financial and other, are available for such an undertaking, the analyst is left with a fourth complication. He or she is comparing something that did happen with something that in fact, for whatever reasons, did not happen. In the absence of a Davis-Bacon requirement, would the contract have gone to the same contractor? If so (or if not), would it have been managed in the same way? Did the act have any impact upon the wages actually paid or upon workforce utilization? Without Davis-Bacon, would different workers have been employed—and would they have been paid different rates?

These same questions confront a public agency in its efforts to investigate Davis-Bacon’s impact. For a public agency, the task is no less massive than it would have been for a private scholar. And, in the public sector, there may be other constraints. Simply put, how much funding and staff time could (or should) be devoted to an investigation of the Davis-Bacon impact on construction that is already in place? What political or policy concerns may come into play?

One might like to be able to say, forthrightly, that a change in the statute could have a positive or a negative impact. However, the state of current exploratory research would probably be insufficient to justify just an assertion.<sup>4</sup>

---

<sup>4</sup> There is an extensive literature on the Davis-Bacon Act, pro and con. See CRS Report 94-908, *Davis-Bacon: The Act and the Literature*, by William G. Whittaker.

## Davis-Bacon Suspended

Historically, it is not entirely clear why it was necessary for the Franklin Roosevelt Administration to have suspended the act. Only very limited documentation concerning the suspension appears to be available. For the more recent Administrations (those of Richard Nixon and George W. H. Bush), it is also difficult to define precisely their rationales—though the Bush Administration acted in response to particular events. The case of George W. Bush, of course, is still unfolding. The materials, here, are presented as something of *an historical sketch*.

### Franklin D. Roosevelt

As noted above, the original version of the Davis-Bacon Act (March 3, 1931), as in effect during the Roosevelt Administration, included the provision that “in case of national emergency the President is authorized to suspend the provisions of this act.”

By the early summer of 1934, with the enactment of various New Deal statutes, there was some confusion as to which laws took priority where the wages of construction workers were concerned. In this instance, there appears to have been a conflict between the provisions of the Davis-Bacon Act and the National Industrial Recovery Act (NIRA)—the latter, a very broad general statute designed to restructure the economy and which was subsequently found to be unconstitutional (1937).<sup>5</sup>

Acting upon the advice of the Secretary of Labor and the Administrator of Public Works, Roosevelt declared, simply: “I find that a national emergency exists,” and, under date of June 5, 1934, suspended the provisions of the Davis-Bacon Act for an indefinite period. He did not define “national emergency” in his proclamation of suspension beyond noting that concurrent operation of the two laws (Davis-Bacon and the NIRA) caused “administrative confusion and delay which could be avoided by suspension of the provisions of the Davis-Bacon Act.”<sup>6</sup>

The impact of the suspension of 1934 seems not to have been immediately felt. Chester M. Wright, a former American Federation of Labor staffer and, at that time, a Washington journalist, observed: “The suspension order did not become publicly known for a week or ten days. Even then it was necessary to go to the State Department for a copy.” When the President’s action did become public, building trades unions protested, charging that the suspension was the “beginning of a national wage-cut campaign.”<sup>7</sup>

On June 30, 1934, as quietly as it had been suspended (just 25 days earlier), the act was restored to full force, the President simply remarking of the suspension proclamation that “it appears that a revocation of the said proclamation would be in the public interest.”<sup>8</sup> As in the case of the first proclamation, the latter seems to have been little noticed, the first press account appearing on July 4, 1934. Wright viewed the second proclamation as tantamount to an acknowledgment that the President had been “badly advised.”<sup>9</sup> No other formal suspension of the act appears to have occurred until 1971.

---

<sup>5</sup> Concerning this period, see John W. Chambers, “The Big Switch: Justice Roberts and the Minimum Wage Cases,” *Labor History*, winter 1969, pp. 44-73.

<sup>6</sup> Statutes at Large, vol. 48, part 2, pp. 1745-1746.

<sup>7</sup> Chester Wright is quoted in *John Herling’s Labor Letter*, Mar. 13, 1971, p. 3. (Hereafter cited as *Herling*.)

<sup>8</sup> Statutes at Large, vol. 49, part 2, p. 3400.

<sup>9</sup> *Herling*, Mar. 13, 1971, p. 3.

## Richard M. Nixon

During February 15-25, 1971, the AFL-CIO Executive Council (and associated groups) met at Bal Harbour, Florida. The Davis-Bacon Act was considered, indirectly and directly, in two contexts. First, there was a demand that general revenue sharing legislation, then pending before Congress (and which the AFL-CIO opposed), provide, inter alia, for labor standards comparable to those in the Davis-Bacon Act. Second, the 40<sup>th</sup> anniversary of the enactment of the Davis-Bacon Act was at hand.

### Setting the Stage

In a resolution dealing with revenue sharing, the Council affirmed, “There is widespread agreement on the responsibility of the federal government to provide financial aid to the state and local governments, particularly, in this time of rapid social and economic change.” However, the Council rejected the Administration’s approach, urging in its place a diversified program of its own. The AFL-CIO resolution noted of the then-current system for distribution of federal funds to local jurisdictions that it provided for both labor standards and civil rights standards—and has “served the nation well.” Then, turning specifically to the Nixon Administration proposals, encompassed in the Baker-Betts bills,<sup>10</sup> the Council explained:

Under the ‘general revenue sharing’ proposal, the federal government would dispense about \$5 billion a year to the states on a no-strings basis—with formulas that would require a pass-through to the local governments. ( ... ) ... without specific and enforceable federal performance standards there is no assurance that federal civil rights guarantees and fair labor practices will be applied to projects supported by no-strings federal grants.<sup>11</sup>

Although the AFL-CIO Council made no specific reference to Davis-Bacon, it was clear that it had that statute, among others, in mind.

In a separate statement, the Council took note that 1971 was the 40<sup>th</sup> anniversary of enactment of the Davis-Bacon Act. “This principle of prevailing wages is essential,” the Council stated, “to assure that work for the federal government is not based upon exploitation of workers. Without such requirement, bidding on federal contracts by unscrupulous employers could result in a competitive undermining of fair wage and labor standards.” And, the Council concluded: “The Davis-Bacon Act is as important today as it was 40 years ago. Its basic principle, as well as effective enforcement, must be maintained. The AFL-CIO will not settle for less.”<sup>12</sup>

### Davis-Bacon Suspended

With the dawning of the 1970s, President Nixon had become concerned about the wage-price structure of the construction industry. On January 18, 1971, he met with the tripartite Construction Industry Collective Bargaining Commission at the White House to express his concerns.<sup>13</sup>

---

<sup>10</sup> The Administration’s general revenue sharing legislation was co-sponsored by Senator Howard Baker (R-TN) and Rep. Jackson Betts (R-OH), among others.

<sup>11</sup> Gary M. Fink (ed.), *AFL-CIO Executive Council Statements and Reports, 1956-1975*, vol. IV (Westport, Conn.: Greenwood Press, 1977), pp. 2067-2071.

<sup>12</sup> *Ibid.*, p. 2090.

<sup>13</sup> *Herling*, Jan. 16, 1971, p. 1. The Commission had been created by President Nixon under Executive Order 11482, Sept. 22, 1969.



“The purpose of the meeting,” Labor Secretary James Hodgson said, “was for the President to urge action on the part of these leaders to do something about curbing the wage-price spiral in construction.” Various options were discussed, including suspension of the Davis-Bacon Act (a proposal reportedly offered by Federal Reserve Chairman Arthur Burns). In closing, the President set a 30-day deadline during which the industry (labor, management and representatives of the public—with Under Secretary of Labor Lawrence Silberman and Commission Executive Secretary John T. Dunlop) should resolve the issues troubling the President. On February 8, the Building and Construction Trades Department, AFL-CIO, met at Bal Harbour (just prior to the winter meeting of the AFL-CIO Executive Council) with the presidential deadline drawing near.<sup>14</sup>

At a February 17 presidential press conference (while the AFL-CIO Executive Council was in session at Bal Harbour), the issue surfaced again. President Nixon was asked what action he would take to hold down wages and prices in construction. He responded that Secretary Hodgson was then meeting with industry leaders and that he would await the Secretary’s report. But, he promised, “there will be action.” And he noted: “The construction industry is a sick industry. It is a sick industry not because of the quality of construction in the United States—it is the highest quality construction in the world—but because it has had too rich a diet.” He noted that construction wage increases, then averaging 16% (while unemployment in construction was double the national average), were too high for the good of the general economy—but he made no mention of Davis-Bacon, *per se*. However, he did note that \$14 billion of the federal budget, the next fiscal year, would be devoted to construction. “Now, with this kind of financial interest in construction,” he suggested, “it is essential that the federal government use its power to the extent that it can to bring about more reasonable settlements within that industry” and to promote “... wage and price stability.”<sup>15</sup>

The AFL-CIO Executive Council meeting was marked by rumors and speculation. Secretary Hodgson moved between Washington and Bal Harbour while trade union representatives met with Dunlop.<sup>16</sup> Discussion between Hodgson and AFL-CIO President George Meany on February 4 had been less than definitive but Meany expressed his hope that the parties “will come up with something.”<sup>17</sup> Following conferences with the President, OMB Director George Shultz and others in Washington, Hodgson returned to Florida for additional talks with Meany on February 19-20, 1971. Saturday evening (February 20), the Secretary and his staff returned to Washington.

In a statement on February 23, 1971, President Nixon announced a decision. “I am today suspending the provisions of the Davis-Bacon Act which requires contractors working on federal construction projects to pay certain prescribed wage rates to their workers,” he declared.

In my judgment, the operation of this law at a time when construction wages and prices are skyrocketing only gives federal endorsement and encouragement to severe inflationary pressures.

The action I have taken today is based on the principle that government programs which contribute to excessive wage and price increases must be modified or rescinded in periods of inflation. This was the principle I applied to industry in the case of recent excessive increases in steel and oil prices. This is the principle I am applying to organized labor in the construction emergency.

---

<sup>14</sup> Herling, Feb. 13, 1971, p. 1.

<sup>15</sup> Public Papers of the President of the United States, *Richard Nixon, Containing the Public Messages, Speeches, and Statements of the President 1971* (Washington: GPO, 1971), p. 165. (Hereafter cited as *The Nixon Papers*.)

<sup>16</sup> Herling, Feb. 20, 1971, p. 1.

<sup>17</sup> Ibid., p. 2.



The period, in President Nixon's view, was marked by very high wages in construction. Were the Davis-Bacon Act to apply, those *excessively high wages* would have to be paid by federal construction contractors. He noted that the act had been adopted in 1931 during a period marked by very different circumstances. In 1971, the act meant something else entirely. He affirmed: "I believe ... that this preferential arrangement does not serve the interests of either the construction industry or the American public at a time when wages are under severe upward pressures." Nixon continued:

The proclamation [4031] I am issuing today also suspends the wage determination provision of more than 50 other federal laws relating to federally involved construction which incorporate the Davis-Bacon Act. *I am calling upon states and other governmental bodies with similar statutes to take similar action.* (Italics added.)

Suspension of Davis-Bacon may have been less an attack upon the act, *per se*, than an effort to twist the arms of labor and management and to encourage, from the President's perspective, a more responsible wage/price policy. He closed his statement of suspension not with an objection to Davis-Bacon but, rather, with a word of advice—presumably both to industry and to labor:

I have suspended the Davis-Bacon Act because of emergency conditions in the construction industry. The purposes of the Davis-Bacon Act can once again be realized when construction contractors and labor unions work out solutions to the problems which have created the emergency.

In the final analysis, those who are directly involved in the construction industry must assume the leadership in finding answers to these complex problems.

Then, Mr. Nixon added, "Construction contractors and labor leaders will have the full cooperation of this Administration as they strive to carry out this crucial responsibility."<sup>18</sup>

## The Davis-Bacon Act Reinstated

Secretary Hodgson explained the action of the President in suspending the Davis-Bacon Act—the suspension occurring several hours after the adjournment of the AFL-CIO Council meeting in Florida. The Secretary noted with respect to plans for wage and price control,

In Miami, I met with a courteous reception and sensed great concern on the part of the labor people. But they could not offer assurances on a voluntary plan, and all I could report to the President was that they would discuss further a government imposed plan. In this situation, the President really had only two options: to impose wage controls or to take some steps that involved less government interjection into the bargaining process. He chose the latter, and the course he took was to suspend relevant provisions of the Davis-Bacon Act.

Hodgson continued:

You may wonder how effective this action will be. We believe that it will be quite effective. It has long been [thought] that these provisions of the act[,] that prescribe that wages in federal construction must be based on those prevailing in the area[,] have often operated to support labor costs at an artificially high level and to give an upward thrust to those rates, not only in contract construction but throughout the industry.

---

<sup>18</sup> *The Nixon Papers* (1971), pp. 199-200.

Then, the Secretary concluded on an optimistic note, following the lead of President Nixon: “We believe suspension should help produce *more reasonable settlements* throughout the industry and restore a better balance to the bargaining process.”<sup>19</sup> (Italics added.)

Organized labor was less enthusiastic. George Meany branded the suspension as “punitive against workers without real effect on halting inflation” and added that it presents “an open invitation to unscrupulous employers to exploit workers by competitive undermining of fair wage and labor standards.” Iron Workers President John H. Lyons suggested that the suspension really constituted a windfall for open shop contractors since the non-union firms could bid competitively upon the basis of union wage scales and then, in the absence of Davis-Bacon sanctions, pay whatever wages they might wish.<sup>20</sup> Meanwhile, Labor Reporter John Herling observed that the President’s action “has certainly brought cheer to the U.S. Chamber of Commerce. For decades,” he pointed out, the Chamber “has battled to remove Davis-Bacon and the related Walsh-Healey Act from the Statute Books.”<sup>21</sup>

Of greater importance, however, both in the context of general revenue sharing and the dispute over Davis-Bacon, was the interrelationship between state and federal laws dealing with the prevailing wage issue. Some states had taken action to provide prevailing wage protection in public construction several decades before enactment of the Davis-Bacon Act—and many states still have such statutes.<sup>22</sup> By the early 1970s, only about nine states had failed to enact “little Davis-Bacon” Acts.<sup>23</sup>

In suspending the Davis-Bacon Act provisions, President Nixon had called upon the “states and other governmental bodies with similar statutes to take similar action.”<sup>24</sup> Normally, in the absence of federal legislation, applicable state statutes would come into play—even, seemingly, on projects funded jointly by federal and state funds or with local revenues. In the wake of the Nixon suspension of Davis-Bacon, New York State Commission of Labor, Louis Levine, affirmed: “*On a publicly-funded construction project, financially assisted by the federal government, the state law requiring prevailing wages remains in effect as mandated by the state legislature.*” (Emphasis in the original.) Levine added: “Therefore, I want to assure the construction industry—labor and management—that wherever federally-aided state projects are involved the wage structure will continue to be based on the state prevailing wage rate law.”<sup>25</sup>

Opinion in Ohio seems, generally, to have paralleled that from New York state. During a speech at the National Press Club, Ohio’s Governor John Gilligan termed the suspension “misdirected, ineffective, carelessly drafted without any full consideration of what is really meant.” Gilligan continued:

Let me suggest some of the realities that underlie that. We have a ‘little Davis-Bacon’ act in Ohio on our law books. We guarantee the payment of prevailing area wages in the construction industry. We had the question arise immediately after Mr. Nixon’s statement that under emergency powers—still not defined so far as I know—he suspended that federal law.

---

<sup>19</sup> Herling, Feb. 27, 1971, p. 1.

<sup>20</sup> Ibid.

<sup>21</sup> Herling, Mar. 6, 1971, p. 1.

<sup>22</sup> See David B. Johnson, “Prevailing Wage Legislation in the States,” *Monthly Labor Review*, Aug. 1961, pp. 839-845, for a discussion of ‘little Davis-Bacon’ prevailing wage legislation.

<sup>23</sup> Armand J. Thieblot, Jr., *The Davis-Bacon Act* (Philadelphia: University of Pennsylvania Press, 1975), p. 17.

<sup>24</sup> *The Nixon Papers* (1971), p. 200.

<sup>25</sup> Herling, Mar. 6, 1971, p. 1. New York had enacted a prevailing wage law for public construction in 1897.

We have the proposition presented to us. We had a dozen road contracts coming up—some of them joint federal-state road contracts with federal funding in them, amounting to several millions of dollars. What were we to do? Had Mr. Nixon set aside our state law as well? Or was it to suspend it? And then what? And then throw the contracts open to bidding by any contractor who came down the pike, who would hire labor at any price? What then would be the floor? \$1.60 an hour, the federal minimum—or what would apply?

The whole construction industry would have been thrown into total chaos if that had been done. We informed the prospective bidders by telegram that they would be expected to comply with that section of the state law. All of them came and bid. All of the bids were awarded. They came in under the estimates of our engineering department. They were awarded to union contractors who had union contracts in full force and effect. And we are not going to suspend the provisions of that law in the state of Ohio.<sup>26</sup>

Meanwhile, Peter G. Nash, U.S. Solicitor of the Department of Labor, announced that “the President’s action in suspending the Davis-Bacon Act renders inapplicable any state ‘little Davis-Bacon law’ in all federally assisted construction where one of the federal requirements was that the federal Davis-Bacon Act would apply,” affirming a federal preemptive power over the states. “Thus a new form of federal-state conflict is under way,” suggested reporter Herling. “At a time when revenue-sharing has become the guideline for the Nixon Administration, new restrictions may be implanted on state and local decision-making.”<sup>27</sup>

At the urging of the Administration, leaders of the building and construction trades and of industry, with public and government representatives, met under the guidance of John Dunlop in an attempt to achieve some solution to the problems in the construction industry. The suspension of the Davis-Bacon Act, some suggested, had not been entirely successful. Indeed, it may have succeeded primarily in augmenting the irritation of trade union leaders toward the Administration. But it allowed Assistant Secretary of Labor Arthur Fletcher (a former city councilman from Pasco, Washington) an opportunity to predict, before a conference of the Associated Builders and Contractors—generally an anti-Davis-Bacon industry group—that “the era of union domination of the employment pattern in the construction industry is over.” Further, Fletcher reportedly denounced the act as both inflationary and discriminatory.<sup>28</sup>

Suspending the Davis-Bacon Act was more complicated than it may have appeared at first. “The fact is,” Herling reported, “that the Davis-Bacon suspension had not been operative in the month since it was ordered.... But in that time,” he added, “the Administration was made to comprehend the legal quagmire into which it might sink as a result of the suspension.” While building trades attorneys began to explore the options open to labor, the tangled web of interapplicability of federal and state statutes (the ‘little Davis-Bacon’ laws) began to emerge.<sup>29</sup>

On March 29, 1971, President Nixon issued another Executive Order, “establishing a cooperative mechanism for the stabilization of wages and prices in the construction industry.” The mechanism was the tripartite Construction Industry Stabilization Committee<sup>30</sup>—later to become a part of the

---

<sup>26</sup> Herling, Mar. 13, 1971, pp. 2-3.

<sup>27</sup> Herling, Mar. 6, 1971, p. 1.

<sup>28</sup> Herling, Mar. 27, 1971, pp. 1-2.

<sup>29</sup> Herling, Apr. 3, 1971, pp. 2-3.

<sup>30</sup> In a statement of Sept. 4, 1969, President Nixon had directed then-Secretary of Labor George Shultz “to devise a way for union and employer groups to cooperate with each other and the Government in the solution of collective bargaining and related problems in the industry.” As a result, under date of Sept. 22, 1969, the President issued Executive Order 11482 creating the tripartite Construction Industry Collective Bargaining Commission—composed of four public representatives and “an equal number from labor and from management.” Secretary Shultz was to serve as

Cost of Living Council—again presided over by John Dunlop. Mr. Nixon pointed out that “contractors and labor leaders have indicated their willingness to cooperate with the Government in fair measures to achieve greater wage and price stability.” Then: “I am therefore today reinstating the Davis-Bacon Act, which I suspended on February 23, 1971, and I am substituting a system of constraints to which I expect all parties will subscribe.”<sup>31</sup> Reaction to restoration was mixed. Generally, attention seems to have shifted to the broader question of wage and price restraints/controls.

## Some Implications of the Nixon Suspension

The Nixon suspension of the Davis-Bacon Act, together with its subsequent reinstatement, had several implications. But, perhaps, these may not have been entirely expected.

In 1931, Davis-Bacon had been enacted as an emergency measure at the urging of the Herbert Hoover Administration. It was subsequently amended in 1935 and thereafter (with some minor tinkering) remained a generally accepted (although not universally accepted) part of the federal labor scene. Then, suddenly, the very existence of the statute was called into question. Labor, of course, reacted, but so did critics of Davis-Bacon. At least until the mid-1990s, repeal of Davis-Bacon had become a *cause célèbre* for each side of the dispute.<sup>32</sup>

Given the interconnectedness of state and federal statutes, suspension of Davis-Bacon was more complicated than it might have appeared. President Nixon, though he called upon the states to act similarly, could not enforce such a commitment from the states—nor did the President seem to imply that he had that authority. (“I am calling upon states and other governmental bodies with similar statutes to take similar action.”)<sup>33</sup> The pronouncement of Solicitor Nash, cited above, would seem to have dubious value either as an interpretation of law—or, perhaps, as policy.

In retrospect, it appears the Nixon suspension of the act was never intended to be of long duration. It was, it would seem, to have been an exercise in arm-twisting, aiming to make the several parties (but, in effect, organized labor) take seriously the Administration’s wage/price control policy. If so, it did not appear to have served this purpose well, but rather it tended to create confusion within the industry. Bidding would move forward. Projects were underway. What impact would (or could) the suspension of the act have in that environment—in what, it turned out, was a suspension of just over 30 days.

Finally, neither the Nixon Administration nor the Roosevelt Administration before it had formally defined what constituted a national emergency.

---

chairman; Dunlop, as secretary. See *The Nixon Papers* (1969), p. 735. With Executive Order 11588 of Mar. 29, 1971, President Nixon restructured the Commission as the Construction Industry Stabilization Committee and, at the same time, created an interagency committee on construction. In Presidential Proclamation 4040, issued that same day, the Davis-Bacon Act was formally reinstated. See *The Nixon Papers* (1971), pp. 491-492.

<sup>31</sup> *The Nixon Papers* (1971), pp. 491-492. See also *Herling*, Apr. 3, 1971, p. 1; and Apr. 10, 1971, p. 1.

<sup>32</sup> During the mid 1990s, concern with repeal of the statute seemed to come to a head when, with the proposals of Senator Mark Hatfield and Representative Curt Weldon, it subsided. See CRS Report 94-408, *The Davis-Bacon Act: Institutional Evolution and Public Policy*, by William G. Whittaker.

<sup>33</sup>

The provision of the statute merely stated, in its then current form: “In the event of a national emergency the President is authorized to suspend the provisions of Sections 276a to 276a-5 of this title.”

## George H. W. Bush

President Bush faced challenges leading up to the 1992 election. Criticism from his own party included Representative Newt Gingrich (R-GA) reportedly calling the current situation “unacceptable” and urging that “[t]he president must define for his team which vision and system he needs to govern effectively and win decisively.”<sup>34</sup>

Suspension of the Davis-Bacon Act appears to have been under consideration by the Bush Administration at least through the early months of 1992. Senior officials suggested that a number of items were on the presidential agenda including “suspending the Davis-Bacon Act.”<sup>35</sup> The *Washington Times*, editorially, confirmed the notion on March 15.<sup>36</sup> And, again on March 19, the *Washington Times* reported that the President would likely “rely on proposals prepared by Richard Darman,” OMB director, one of which would be to “lift the Davis-Bacon Act.”<sup>37</sup> On March 20, the *Washington Post* reported that among other items that the President was contemplating would be “limiting the Davis-Bacon wage law.”<sup>38</sup> But nothing occurred just then.

## The President Acts on Davis-Bacon

The issue of Davis-Bacon continued to appear through the next several months. On April 21, 1992, White House Deputy Press Secretary Judy Smith confirmed that suspension of Davis-Bacon was still under consideration but that there was “no closure on it” yet.<sup>39</sup> A day later, the *Daily Labor Report* stated that the President “will not seek to suspend the Davis-Bacon Act by declaring an economic emergency, believing that it would establish a precedent he does not want to set.”<sup>40</sup> But then, on June 5, it was reported that the White House was “again giving ‘serious consideration’ to ordering a nationwide suspension” of the act and, according to “one White House source,” the decision to suspend the act is now “more likely than not.”<sup>41</sup>

Critics of Davis-Bacon continued to press the President to take action. As the summer passed, however, the Davis-Bacon issue seemed to disappear from public view. It is also possible that no identifiable emergency had as yet occurred. Behind the scenes, the issue seems still to have been under consideration, for on October 7, 1992, OMB circulated a memorandum to agency heads seeking comment on a proposed suspension of the act. The *Daily Labor Report* stated, “Consideration of the suspension appeared to be on a fast track as comments were requested by noon of the same day.”<sup>42</sup> On October 9, 1992, Congress adjourned.

During late August, Hurricane Andrew struck Florida and Louisiana. On September 12, 1992, Hurricane Iniki struck Hawaii. Taking note of the destruction caused by the two storms, President Bush, on October 14, 1992, declared the two areas “a ‘national emergency’ within the meaning of Section 6 of the Davis-Bacon Act.” He stated in a Presidential Proclamation (No. 6491):

---

<sup>34</sup> Ann Devroy and Richard Morin, “Bush Recasts His Message As Rating Falls to 39%,” *Washington Post*, Mar. 10, 1992, p. A1.

<sup>35</sup> Ibid.

<sup>36</sup> Editorial, “It’s Time for President Bush To Send a Message of His Own,” *Washington Times*, Mar. 15, 1992, p. B2.

<sup>37</sup> Paul Bedard, “Bush Expected To Back Off on Threat to Hill,” *Washington Times*, Mar. 19, 1992, p. A4.

<sup>38</sup> Ann Devroy, “Bush to Mark Today’s Deadline With Hill Offensive,” *Washington Post*, Mar. 20, 1992, p. A6.

<sup>39</sup> Bureau of National Affairs, *Daily Labor Report*, Apr. 22, 1992, p. A10. (Hereafter cited as *Daily Labor Report*.)

<sup>40</sup> *Daily Labor Report*, Apr. 23, 1992, p. A15.

<sup>41</sup> *Daily Labor Report*, June 5, 1992, p. A12.

<sup>42</sup> *Daily Labor Report*, Oct. 13, 1992, p. A4.

... I do hereby suspend, until otherwise provided, the provisions of any Executive order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act;....<sup>43</sup>

The Proclamation went on to discuss the relative merits of the suspension in terms of the general reconstruction in the three areas to which it applied: Florida, Louisiana, and Hawaii.<sup>44</sup>

## Suspension of Davis-Bacon Draws Fire, Praise

The action by President Bush raised a number of questions. First, what constitutes a national emergency for Davis-Bacon purposes? The answer may not have been beyond dispute. Second, if the concept of national emergency under Davis-Bacon can be made to include such disasters as hurricanes (and, perhaps, earthquakes, floods, riots, etc.), did the act then empower the President to enter into a selective suspension of the act? Third, is the presidential suspension authority limited to the Davis-Bacon Act, *per se*, or could it be extended to the various program statutes into which the Davis-Bacon “principle” has been incorporated? Fourth, in areas where there are state and local prevailing wage requirements, how might these be affected, if at all, by a presidential suspension of Davis-Bacon? Fifth, what was the impact likely to be upon the entire contracting process in the several affected areas?

Some questioned the President’s authority “to selectively suspend” the act. “It is clear that Congress delegated to the President authority to suspend application of the Davis-Bacon Act in a national emergency,” stated Robert Georgine, president of the AFL-CIO Building and Construction Trades Department. “But it is equally clear that Congress did not authorize the president to pick and choose where application of the act would be suspended.”<sup>45</sup> Others “questioned the wisdom of sending low-wage, low-skilled workers to the hurricane-damaged areas where skilled and experienced building tradesmen are needed.”<sup>46</sup> Again, Georgine called it “a callous election-year move” and “nothing more than a baldly calculated political ploy designed to curry favor with those who oppose federal labor standards.”<sup>47</sup>

Within a two-week period, the President signed a second order—Executive Order No. 12818—which dealt, in part, with the concept of *project labor agreements*. Taken together, the two were of critical importance, some within the trade union movement asserted.<sup>48</sup>

---

<sup>43</sup> *Weekly Compilation of Presidential Documents*, vol. 28, no. 42, Oct. 19, 1992, pp. 1936-1937. Under the Bush suspension, *the act remained in place* for all areas *other than* those directly effected by hurricanes in Florida, Louisiana and Hawaii.

<sup>44</sup> The impetus for the proclamation may not have come from the affected areas. On Jan. 21, 1993, Senator Daniel Inouye introduced S. 138, a bill to provide that the President “shall not suspend the provision of ... [the Davis-Bacon] Act within the state of Hawaii” and, further, that Proclamation No. 6491 shall be amended “to eliminate all references to the state of Hawaii and Hurricane Iniki.”

<sup>45</sup> *Daily Labor Report*, Oct. 16, 1992, pp. A11-A12. See also, The White House, Office of the Press Secretary, *Emergency Suspension of the Davis-Bacon Act*, Oct. 14, 1992, p. 1. (Cited hereafter as *White House Fact Sheet*.)

<sup>46</sup> *Daily Labor Report*, Oct. 13, 1992, p. A4.

<sup>47</sup> *Daily Labor Report*, Oct. 16, 1992, p. A11.

<sup>48</sup> On Oct. 23, 1992, President Bush signed Executive Order No. 12818: “Open Bidding on Federal and Federally Funded Construction Projects.” The document was regarded by organized labor as anti-union. See *Daily Labor Report*, Oct. 28, 1992, pp. A2-A3, and D1-D2. See also (concerning the two proclamations): “Bush Bans Nonunion Labor Bias: Move Seen as Effort To Shore Up Support of Builders’ Group,” unsigned, in *the Dallas Morning News*, Oct. 24, 1992, p. 5A; and Stuart Silverstein and James Gerstenzang, “Order by Bush Curtails Some Union Job Rules,” *Los Angeles Times*, Oct. 24, 1992, part A, p. 22. See also *Daily Labor Report*, July 28, 1992, pp. 11-13, which explains the dispute



Candice Johnson, writing in the AFL-CIO News, opined that “President Bush, in a desperate attempt to win business support in electoral-rich Florida and Louisiana, has suspended Davis-Bacon safeguards for hurricane relief efforts.”<sup>49</sup> Frank Swoboda, columnist for the Washington Post, was more direct—discussing the two putatively anti-union directives. Swoboda cited Steven Westra, president of the Associated Builders and Contractors (ABC). Westra called Bush’s action “courageous” and said “the president ‘deserves our votes and our full support.’” With this, Swoboda said, the ABC, “a trade group representing 16,000 nonunion contractors, immediately announced its support for Bush in the November 3 elections.”<sup>50</sup>

The Coalition to Reform the Davis-Bacon Act (which included the ABC) wrote to express its thanks to the President. “We appreciate that your action will enable federal assistance to go farther in rebuilding hurricane devastated communities and create thousands of new jobs....” The Coalition spoke of “giving residents a chance to assist in rebuilding their own communities” and of “expanded opportunities for contractors to hire local workers.”<sup>51</sup> *The National Utility Contractor* headlined: “President Bush Grants Davis-Bacon Reprieve for Hurricane Stricken Areas.” The President’s action, it suggested, “could create as many as 11,000 new construction jobs in the three states.”<sup>52</sup> And Donald Lambro, reporter for *Human Events*, seemed to have felt that a suspension was appropriate. Then, looking toward the future, he suggested: “By suspending it everywhere, [the newly elected President] Clinton could help combat high youth unemployment, give federal taxpayers more for their tax dollars and help open up economic opportunities for inner-city minorities.”<sup>53</sup>

## President Clinton and Restoration of Davis-Bacon

On February 1, 1993, President William Clinton issued Executive Order No. 12836, revoking Executive Order No. 12818, and restoring the use of project labor agreements in public (federal) construction. It provided, inter alia, that the “heads of executive agencies shall promptly revoke any orders, rules, or regulations” impeding such project labor agreements.<sup>54</sup> The Wall Street Journal reported that Mr. Clinton has “pleased his political supporters in organized labor” by revoking the prohibition on project labor agreements. But it continued: “The so-called project-agreement order was issued in the heat of the presidential campaign by George W. Bush last October 23 after the Associated Builders and Contractors, a trade group for 16,000 nonunion construction companies had threatened not to endorse his bid for re-election.”<sup>55</sup>

---

between the contractors and the Bush Administration over the Boston Harbor project.

<sup>49</sup> Candice Johnson, “Bush Plays Politics with Davis-Bacon Worker Protections,” *AFL-CIO News*, Oct. 26, 1992, p. 1.

<sup>50</sup> Frank Swoboda, “Bush Shifts on Non-Union Contracts Bids,” *Washington Post*, Oct. 25, 1992, p. A16.

<sup>51</sup> Letter in file from Coalition to Reform the Davis-Bacon Act to George Bush, Oct. 15, 1992.

<sup>52</sup> “Just from the Trenches,” *The National Utility Contractor*, Nov. 1992, p. 8.

<sup>53</sup> Donald Lambro, “How Clinton Could Improve Economy,” *Human Events*, Jan. 23, 1993, p. 17.

<sup>54</sup> 58 *Federal Register*, Feb. 3, 1993, p. 7045.

<sup>55</sup> Bruce Ingersoll, “Clinton Cancels Bush Orders About Unions,” *the Wall Street Journal*, Feb. 2, 1993, p. A2. The article goes on to note (p. A8) that Clinton had also revoked Executive Order No. 12800 “to the extent consistent with law” which requires employers to post notices concerning a worker’s *Beck rights*: the right to reject full union membership. Stephen Moore, associated with the Cato Institute, moreover, was quoted as saying that “any digging done on federal Projects is apt to be twice as expensive as it needs to be.” See Sylvia Nasar, “Some Dos and Don’ts for a Clinton Public Works Policy,” *the New York Times*, Feb. 7, 1993, Sect. 3, p. 5. See also Rex Hardesty, “Clinton Strikes Balance, Lifts Anti-Union Orders,” *AFL-CIO News*, Feb. 15, 1993, pp. 1 and 4.



On March 6, Clinton issued Proclamation No. 6534, providing that the Bush suspension be withdrawn and that the Davis-Bacon Act be fully restored.<sup>56</sup> “Within 15 days, according to Clinton’s proclamation, Davis-Bacon’s requirements will be back in force in the affected areas for all direct federal construction and for federally-assisted construction.”<sup>57</sup>

## Suspension Under George W. Bush

On August 29, 2005, Florida and the Gulf Coast were hit by Hurricane Katrina. The result was one of the greatest natural disasters in the history of the United States. Gradually, the impact of the hurricane was assessed. Diverse public and private funding was made available to the areas affected, while thousands of people were displaced from their homes, often to other states.

### Reaction from President Bush

“Year after year,” observed Representative George Miller, ranking Democrat on the House Committee on Education and the Workforce, “Republicans have tried to erase this law [the Davis-Bacon Act] ... But they do not have the votes in Congress to do it.”<sup>58</sup> The hurricane, however, may have made a difference, for the *Washington Post* headlined, in an issue of September 10, 2005, “In the Floods, Parties’ Agendas Surface.”<sup>59</sup>

There had been large pockets of poverty in the New Orleans area. When the announcement was made to vacate the city as the storm approached, the poor apparently had few resources upon which to rely. Further, a lack of transportation may have been critical and, perhaps as important, the lack of a destination. After the storm passed, many poor remained amid the ruins of a once thriving city, still without resources, but now without homes or jobs.

It was reported that on Wednesday, September 7, when Budget Director Joshua Bolten briefed House Republicans on the President’s supplemental spending request, “conservative lawmakers urged him to lift the wage rules” tied to Davis-Bacon.<sup>60</sup> That same day, Representatives Tom Feeney, Jeff Flake, and Marilyn Musgrave organized a letter to the President, urging him to use his presidential power to waive Davis-Bacon requirements.

Temporary suspension of Davis-Bacon will help avoid costly delays that impede clean-up and reconstruction efforts along the Gulf Coast. Time is of the essence and any action that can be taken to expedite this process need [sic] to be,’ stated Feeney.

Feeney went on to state general arguments against Davis-Bacon and concluded that the act often results in “driving up costs” of construction.<sup>61</sup>

---

<sup>56</sup> 58 *Federal Register*, vol. 58, Mar. 10, 1993, p. 13189.

<sup>57</sup>

*Daily Labor Report*, Mar. 9, 1993, p. A5. Charles W. Baird (a consultant with the Cato Institute and a professor at California State University at Hayward) stated, “The actual explanation was suggested by the president of the Teamsters, who boasted that Clinton could not have been elected without the organized financial and in-kind support of unions.” See Baird, “Clinton’s Bows to Big Labor,” *Human Events*, June 12, 1993, p. 16.

<sup>58</sup> George Miller, Statement to the Press, Sept. 8, 2005.

<sup>59</sup> Jonathan Weisman and Amy Goldstein, “In the Floods, Parties’ Agendas Surface,” *Washington Post*, Sept. 10, 2005, A4. (Hereafter cited as Weisman and Goldstein, *In the Floods*.)

<sup>60</sup> Ibid.

<sup>61</sup> Tom Feeney, Statement to the Press, Sept. 7, 2005. In his release of Sept. 9, 2005, not related to Rep. Feeney’s comments, Rep. Miller affirmed, “Davis-Bacon applies to all workers, whether they belong to a union or not. Davis-

In the letter to the President, signed by 35 Members of the House, the concept of a “national emergency” was affirmed. It was also stated that compliance with the wage processes of the Davis-Bacon Act could delay reconstruction (“... often a delay of two weeks....”) and that the act’s “regulations effectively discriminate against contractor employment of non-union and lower-skilled workers” and “can even raise total construction costs by up to 38%.” The letter reviewed the past history of Davis-Bacon suspensions and closed, “Faced with the massive rebuilding challenges ahead, we respectfully urge you to make a presidential proclamation to suspend Davis-Bacon until our country is once again whole.”<sup>62</sup>

On September 8, 2005, President Bush suspended the Davis-Bacon Act *as it relates to specific segments of the country* (i.e., to portions of Florida, Alabama, Mississippi, and Louisiana).<sup>63</sup> He specified both the act and “the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor” under the Davis-Bacon rules. The suspension would continue “until otherwise provided.”<sup>64</sup>

## Reaction to the Promulgation

Representative Charlie Norwood praised the President for his “quick action to strip away unnecessary bureaucracy that may hamper our ability to recover....” Davis-Bacon rules “are onerous and drive up the cost of any project to which they are applied....” The nation, he stated, “can’t afford that kind of inefficiency, red tape, and inflated costs when we have an entire region to rebuild, largely at taxpayer expense.”<sup>65</sup> The *Daily Labor Report*, quoting the President, suggested that suspension “will result in greater assistance to these devastated communities and will permit the employment of thousands of additional individuals....”<sup>66</sup> Or, as Representative Feeney stated: “Lots of people in Louisiana are willing to go to work tomorrow, and the market will set the wage....”<sup>67</sup>

Organized labor opined that the President’s order “would allow contractors to pay substandard wages to construction workers in the affected areas.” John Sweeney, AFL-CIO president, explained: “Employers are all too eager to exploit workers. This is no time to make that easier.” Sweeney stated: “Taking advantage of a national tragedy to get rid of a protection for workers that corporate backers of the White House have long wanted to remove is nothing less than profiteering.” Edward Sullivan, president of the Building and Construction Trades Department, likened the effect to “legalized looting.”<sup>68</sup> The *New York Times* editorialized, “By any standard of

---

Bacon helps to provide *a floor* for all workers’ wages.” (Italics added.)

<sup>62</sup>

Rep. Jeff Flake, Statement to the Press, Sept. 7, 2005. The statement includes the letter to the President.

<sup>63</sup> Concerning the procedure for suspension of such acts as the Davis-Bacon Act, see CRS Report 98-505, *National Emergency Powers*, by Harold C. Relyea.

<sup>64</sup> See White House press releases, Sept. 8, 2005.

<http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html>. Concerning the duration and/or termination of suspension of an act such as the Davis-Bacon Act, see Relyea, *National Emergency Powers*, op cit.

<sup>65</sup> Rep. Charlie Norwood, Statement to the Press, Sept. 8, 2005. Reps. Norwood and Charles W. Boustany (R-LA) had written to the President, Sept. 8, 2005, urging suspension of the act.

<sup>66</sup> *Daily Labor Report*, Sept. 9, 2005, p. AA1.

<sup>67</sup> Rep. Feeney is cited in Weisman and Goldstein, *In the Floods*, p. A4.

<sup>68</sup> *AFL-CIO: News for Working Families*, Sept. 10, 2005.

human decency, condemning many already poor and now bereft people to sub-par wages—thus perpetuating their poverty—is unacceptable.”<sup>69</sup>

## Legislation Introduced

Somewhat anticipating the President’s action, Representative Flake introduced the “Cleanup and Reconstruction Enhancement Act (CARE Act)” on September 7, 2005. The Flake bill (H.R. 3684) would, whenever a “major disaster” has been proclaimed under the Stafford Act, *automatically* suspend the Davis-Bacon Act for one year in the area of concern. A companion bill (S. 1817) was subsequently introduced by Senator Jim DeMint (R-SC).

In the wake of the President’s action, several bills were introduced that would have had the effect of overturning the President’s Davis-Bacon proclamation: H.R. 3763 (George Miller), H.R. 3834 (Pallone), and S. 1739 (Kennedy).<sup>70</sup> Senator Barbara Boxer introduced a two-pronged bill (S. 1763), first, to give employment preference to workers who have been displaced by Hurricane Katrina; and second, to restore the impact of the Davis-Bacon Act in the areas in which it had been suspended.

In addition to legislation dealing specifically with the Davis-Bacon Act, two bills seemed to challenge Administration policy in that regard. Representative Miller introduced H.Res. 467: a bill “[r]equesting that the President transmit to the House of Representatives information in this possession relating to contracts for services or construction related to Hurricane Katrina recovery that relate to wages and benefits to be paid to workers.” The bill was referred to the Committee on Education and the Workforce—where, ultimately, it was rejected by a vote of 25 to 20.<sup>71</sup> A separate measure, but of similar content (H.Res. 488), had been introduced by Representative Steve LaTourette (R-OH) and had been forwarded to the Committee on Transportation and Infrastructure chaired by Representative Don Young (R-AK).<sup>72</sup> Finally, H.J.Res. 69 was introduced by Representative Miller, the impact of which would have been termination of the national emergency declared by the President and reinstatement of the Davis-Bacon Act.

## Davis-Bacon Reinstated

Gradually, conditions in the Gulf region became clearer and, in that context, a movement was discerned for re-institution of the Davis-Bacon Act. In late September, some 37 Republicans “signed on to a letter” to President Bush urging that his proclamation be rescinded. In a more varied appeal, LaTourette stated: “When you suspend Davis-Bacon, you also suspend the Copeland Anti-Kickback prohibitions” of the act “so you have no more certified payrolls.” For those who are “... worried about profiteering and other things, reinstating Davis-Bacon is a good idea.”<sup>73</sup>

In late October, about 20 Republicans reportedly attended a meeting with White House Chief of Staff Andrew Card at the office of Speaker Dennis Hastert. Card was described as “more than receptive” to suggestions from those supportive of Davis-Bacon and acknowledged that “they

---

<sup>69</sup> “A Shameful Proclamation,” editorial, *New York Times*, Sept. 10, 2005, p. A26.

<sup>70</sup> H.Res. 516 was introduced by Representative Charlie Melancon (D-LA), the thrust of which was to provide for consideration of H.R. 3763.

<sup>71</sup> See CRS Report RL31909, *House Resolutions of Inquiry*, by Louis Fisher.

<sup>72</sup> *Daily Labor Report*, Oct. 21, 2005, pp. A1 ff. Rep. Young had been a signatory to a pro-Davis-Bacon letter to the White House signed by 37 members of the Republican Party.

<sup>73</sup> *Daily Labor Report*, Oct. 11, 2005, p. A2.

weren't saving any money" through the suspension.<sup>74</sup> On October 25, according to one report, Card called Representative LaTourette to invite him to a meeting at the White House the following day—October 26. During the White House meeting, Card was quoted as having said, according to LaTourette, that "there appeared to be no savings garnered from suspending the Davis-Bacon Act."<sup>75</sup>

On October 26, 2005, word began to surface that a change of policy was in the works, and, by late afternoon, it seemed to have been confirmed. The Bush Administration, the *Daily Labor Report* stated, would reinstate on November 8<sup>th</sup>—just two months after its suspension—the "Davis-Bacon Act prevailing wage requirements for reconstruction projects in the hurricane-battered Gulf Coast region." The article continued, quoting Labor Secretary Elaine Chao, that "[u]pon review of current conditions in the declared areas, the administration will reinstate Davis-Bacon...."<sup>76</sup> Under the circumstances, the suspension-related bills became moot.

## Author Information

William G. Whittaker  
Specialist in Labor Economics  
Domestic Social Policy Division

---

<sup>74</sup>

*Daily Labor Report*, Oct. 21, 2005, pp. A1 ff.

<sup>75</sup> *Daily Labor Report*, Oct. 27, 2005, pp. AA1 ff. "The issue of prevailing wages under Davis-Bacon really did not mean much because the market was driving wage rates," according to Derrell Cohoon, executive director, Associated General Contractors of Louisiana. If there had been any positive impact from suspension of Davis-Bacon, Cohoon indicated, it was release from the requirement of payroll reporting. "That's the real issue." Later, Perry Nations, executive director, Associated General Contractors of Mississippi, when asked about pay rates in construction in the Gulf States, indicated that they were then well in excess of the Davis-Bacon prevailing wage. Of the impact of the reinstatement, Nations explained: "... truthfully, none." See *Daily Labor Report*, Oct. 21, 2005, p. A1 ff, and Nov. 3, 2005, p. A6 ff.

<sup>76</sup>

*Daily Labor Report*, Oct. 27, 2005, pp. AA1 ff. On Nov. 3, 2005, President Bush, while at a conference at Mar del Plata, Argentina, signed the proclamation restoring the act to full force. See Proclamation 7959, Nov. 3, 2005, in *Weekly Compilation of Presidential Documents*, Vol. 41, No. 44, p. 1650.

---

## **Disclaimer**

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.